

46 Am. Jur. 2d Judges § 207

American Jurisprudence, Second Edition | February 2022 Update

Judges

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IX. Disqualification to Act in Particular Case

D. Waiver and Estoppel

§ 207. Participation in proceedings as effecting waiver or estoppel of disqualification of judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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[Waiver or loss of right to disqualify judge by participation in proceedings—modern state criminal cases, 27 A.L.R.4th 597](#)

[Waiver or loss of right to disqualify judge by participation in proceedings—modern state civil cases, 24 A.L.R.4th 870](#)

In some jurisdictions, once an assigned judge has heard any matter in a case, the parties have waived the right to object to that judge,¹ and even when the court has not yet ruled on a substantial issue, a motion for the substitution of a judge may be untimely if the moving party had an opportunity to test the waters and form an opinion of the court's reaction to such party's claim.²

Waiver of the right to disqualify a judge has occurred where a defendant pleaded guilty³ or the court refused to accept a proposed plea;⁴ where a juvenile delinquent participated in a disposition hearing in which matters were disposed of on stipulation;⁵ where a litigant applied for a bond in a contested hearing;⁶ where, in a criminal trial, the judge ruled on various motions and thereby indicated personal views on the merits of the prosecution;⁷ where a court ruled against a trademark infringement defendant but before a hearing on a motion to find the defendant in contempt of an infringement injunction;⁸ where a judge issued a summary judgment ruling;⁹ and where a judge presided over a hearing on a discovery motion.¹⁰ A defendant waived a judge's disqualification from prosecution and could not complain about the judge's later participation in the case, where the defendant specifically asked the trial court not to rule on the motions for a change of judge and venue, sought to withdraw the motions and persuaded the court to let the defendant do so, and went to trial with no complaint, objection, or further comment.¹¹

A litigant who proceeds to trial knowing of potential bias by the trial court waives the objection and cannot challenge the court's qualifications on appeal.¹² Likewise, a defendant waived a peremptory challenge to the judge by participating in a case management conference in front of the judge after filing the challenge and failing to raise the issue.¹³

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Footnotes

- 1 Golden v. McNeal, 78 S.W.3d 488 (Tex. App. Houston 14th Dist. 2002).
- 2 City of Granite City v. House of Prayers, Inc., 333 Ill. App. 3d 452, 266 Ill. Dec. 803, 775 N.E.2d 643 (5th Dist. 2002).
- 3 State v. Burgers, 1999 SD 140, 602 N.W.2d 277 (S.D. 1999).
- 4 People v. Desordi, 238 A.D.2d 738, 656 N.Y.S.2d 505 (3d Dep't 1997).
- 5 Juvenile in Mohave County Juvenile Court Cause No. J-96-560 v. Superior Court In and For County of Mohave, 189 Ariz. 515, 943 P.2d 875 (Ct. App. Div. 1 1997).
- 6 Matter of Estate of Russell, 119 N.M. 43, 1994-NMCA-145, 888 P.2d 489 (Ct. App. 1994).
- 7 People v. Maxwell, 272 Ill. App. 3d 57, 208 Ill. Dec. 841, 650 N.E.2d 298 (4th Dist. 1995).
- 8 Te-Ta-Ma Truth Foundation—Family of URI, Inc. v. World Church of the Creator, 246 F. Supp. 2d 980 (N.D. Ill. 2003).
- 9 Jourdan v. Nationsbank Mortg. Corp., 42 P.3d 1072 (Alaska 2002); Worth v. Benton County Circuit Court, 351 Ark. 149, 89 S.W.3d 891 (2002).
- 10 In re Approximately \$17,239.00, 129 S.W.3d 167 (Tex. App. Houston 14th Dist. 2003).
- 11 State v. Smith, 293 S.W.3d 149 (Mo. Ct. App. S.D. 2009).
- 12 Appeal of the Local Government Center, Inc., 165 N.H. 790, 85 A.3d 388 (2014).
- 13 Higuera v. Lee, 241 Ariz. 76, 383 P.3d 1150 (Ct. App. Div. 2 2016).

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